

**IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**Case No. 072942**

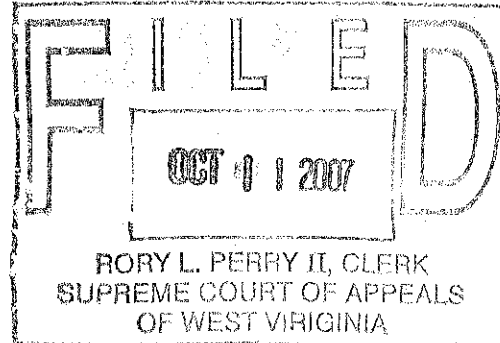
O. J. MAYO,

Respondent,

vs.

WEST VIRGINIA SECONDARY  
SCHOOL ACTIVITIES  
COMMISSION,

Petitioner.



**RESPONSE OF *AMICI CURIAE*  
WHEELING CENTRAL CATHOLIC HIGH SCHOOL  
AND WEIRTON MADONNA CATHOLIC HIGH SCHOOL  
TO PETITION FOR APPEAL OF WEST VIRGINIA  
SECONDARY SCHOOL ACTIVITIES COMMISSION**

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FROM AN ORDER OF THE  
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA  
CIVIL ACTION NO. 07-C-76

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**Of Counsel for Wheeling Central  
Catholic High School:**

Robert P. Fitzsimmons (1212)  
Robert J. Fitzsimmons (9656)  
Fitzsimmons Law Offices  
1609 Warwood Ave  
Wheeling WV 26003  
(304) 277-1700

**Of Counsel for Weirton Madonna  
Catholic High School:**

Michael E. Nogay (2744)  
Sellitti Nogay & McCune PLLC  
3125 Pennsylvania Ave Ste 7  
PO Box 3095  
Weirton WV 26062  
(304) 723-1400

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**To: The Honorable Justices of the Supreme Court of Appeals of  
West Virginia:**

**I.**

**Statement of Interest**

Wheeling Central Catholic High School (hereinafter  
"Wheeling Central") and Weirton Madonna Catholic High School  
(hereinafter "Weirton Madonna") file this brief in support of

petitioner, West Virginia Secondary School Activities Commission (hereinafter "WVSSAC"), in reference to the fourth issue presented for appeal.

In Paragraphs 30 and 34 of its "Amended Order" entered on May 21, 2007, the Circuit Court of Cabell County issued the following rulings:

"30. Defendant WVSSAC is an organization established by West Virginia Code § 18-2-25 as an administrative agency of the state and a participating public employer in the West Virginia Public Employees Retirement System. 58 W. Va. Op. Atty. Gen 151, 1980 WL 119398 (W.Va.A.G.). The Defendant WVSSAC is a state agency whose funds may be invested in the Consolidated Investment Fund established pursuant to W.V. Code § 12-6-1, et seq. 61 W. Va. Op. Atty. Gen. 72, 1986 WL 288932 (W.Va.A.G.)."

\* \* \*

"34. Thus, the Court finds that the WVSSAC is a statutorily-created agency or instrumentality of West Virginia state government."

Wheeling Central and Weirton Madonna assert that the circuit court erred in finding that the WVSSAC is a "statutorily-created agency or instrumentality of West Virginia state government." Your *amici curiae* assert that the WVSSAC is and always has been a private, voluntary organization. The circuit court's ruling creates serious constitutional issues

which arise from the participation and membership of private and parochial schools in the Commission. First, the ruling threatens the future membership and/or participation of religiously-affiliated schools in the WVSSAC because of the Establishment Clause of the First Amendment to the United States Constitution. Further, the ruling in effect may amount to an unconstitutional taking of private and parochial school property.

## II.

### History

Wheeling Central (Ohio County) and Weirton Madonna (Hancock County) are parochial West Virginia secondary schools affiliated with the Roman Catholic Church. Wheeling Central and Weirton Madonna are member schools of the WVSSAC and compete in interscholastic athletics and other extracurricular activities.

The WVSSAC is a voluntary association of principals of West Virginia secondary schools. The association was first organized on June 17, 1916, and since its inception has controlled, supervised and regulated the interscholastic athletic events and other extracurricular activities of its member schools. The WVSSAC is currently comprised of representatives from West Virginia public, private and parochial secondary schools; however, private and parochial schools were not always eligible for membership.

From the date of the Commission's organization in June of 1916 through 1967, private and parochial schools were prohibited membership in the WVSSAC. Private and parochial schools were responsible for organizing, supervising and

regulating their own interscholastic competitions and were prohibited from competing with West Virginia public schools for "state public championships." Since Catholic schools were not allowed to compete in "state public championships," they organized their own "state Catholic championships." One such example was the West Virginia State Catholic Basketball Tournament held annually at St. Joseph Central Catholic High School in Huntington, West Virginia, from 1936 to 1977.<sup>1</sup>

The right of private and parochial schools to join the WVSSAC was first recognized in 1967 upon passage of W.Va. Code §18-2-25:

"§ 18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia secondary school activities commission; authority of commission; approval of rules and regulations by state board; incorporation; funds; PARTICIPATION BY PRIVATE AND PAROCHIAL SCHOOLS.

\* \* \*

"The West Virginia secondary school activities commission shall promulgate reasonable rules and regulations providing for the control, supervision and regulation

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<sup>1</sup> The first State Catholic Basketball Tournament was actually held in Morgantown, West Virginia, in 1936. Thereafter, the City of Huntington, West Virginia, became the permanent host of the annual event. The West Virginia State Catholic Basketball Championship was continued until 1977 when it was announced that the West Virginia State Catholic Association would be dissolved and the majority of its membership would compete for the state public school championship.

of the interscholastic athletic events and other extracurricular activities of such private and parochial secondary schools as elect to delegate to such commission such control, supervision and regulation, upon the same terms and conditions, subject to the same regulations and requirements and upon the payment of the same fees and charges as those provided for public secondary schools." [Emphasis added.]

Following the passage of W.Va. Code §18-2-25, private and parochial schools applied for and were accepted as members of the WVSSAC. Wheeling Central applied for and was accepted as a member of the WVSSAC on February 14, 1970. (See Minutes from the Special Meeting of the WVSSAC Board of Appeals, February 14, 1970, attached hereto as Exhibit 1). Weirton Madonna became a member of the WVSSAC in August of 1977. All Catholic schools have joined the WVSSAC.<sup>2</sup>

The acceptance of Wheeling Central as a WVSSAC member in 1970 ended a 50+ year history of segregation between public and Catholic secondary school interscholastic state championship competition. West Virginia Catholic secondary schools had long desired the opportunity to join the WVSSAC in hopes of creating a closer relationship and integration between public and Catholic schools. Catholic schools sought some of the basic benefits that had been provided to public school children,

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<sup>2</sup> St. Joseph Central Catholic High School (Cabell County) was the last West Virginia Catholic High School to join the WVSSAC in 1981.



together with the known benefits of further integrating public, private and parochial schools.<sup>3</sup>

It has now been over 27 years since the first Catholic school joined the WVSSAC. Since that time all West Virginia students have benefited from the increased diversity in West Virginia interscholastic participation. All West Virginia students are now beneficiaries of increased competition, exposure to a greater diversity of ideas and thoughts, increased religious tolerance through understanding and the development of new friendships.

Wheeling Central and Weirton Madonna are proud of their voluntary membership in the WVSSAC and hope that it will continue well into the future for the benefit of all West Virginia students. For this reason, Wheeling Central and Weirton Madonna are fearful that the finding by the Circuit Court of Cabell County that the WVSSAC is a "statutorily-created agency or instrumentality of West Virginia state government" has serious and constitutional implications that will uproot the positive effects made by integrating our Catholics schools in the WVSSAC.

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<sup>3</sup> Although not directly involved in this case, other rights for Catholic school students evolved over the years. An example of this was access to public school textbooks which had been denied until 1968. See Board of Education v. Allen, 392 U.S. 236 (1968)

### III.

## Points and Authorities

### Cases

- Board of Education v. Allen, 392 U.S. 236 (1938)
- Blower v. West Virginia Educational Broadcasting Authority, 182 W. Va. 528, 389 S.E.2d 739 (1990).
- Everson v. Board of Education of Ewing Township, 330 U.S. 1, 15 (1947)
- Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982).
- Lemon v. Kurtzman 403 U.S. 602 (1970).
- Sanders v. Louisiana High School Athletic Association, 242 So.2d 19, 28-29 (La.App.3<sup>rd</sup> Cir. 1970)
- State ex. rel. Manchin v. West Virginia Secondary School Activities Commission, 178 W.Va. 699, 364 S.E.2d 25 (1987).
- State ex rel. West Virginia Secondary School Activities Commission v. Oakley, 152 W. Va. 533, 164 S.E.2d 775 (1968).
- Texas Monthly, Inc. v. Bullock, 489 U.S. 1 (1989).

### Statutes

- W.Va. Code §12-2-2 (1983).
- W.Va. Code §18-2-25 (1967).
- W.Va. Code §18-5-13 (1987).

### **Constitutions**

United States Constitution First Amendment.

United States Constitution Fourteenth Amendment.

WVSSAC Constitution §1-1-4.1.

WVSSAC Constitution §1-1-5.1.

WVSSAC Constitution §1-1-5.2.

WVSSAC Constitution §1-1-5.3.

### **Other**

State Administrative Procedures Act.

#### IV.

#### Discussion of Law

##### A.

THE CIRCUIT COURT'S FINDING THAT THE WVSSAC IS A STATE AGENCY ESTABLISHED BY W.VA. CODE §18-2-25 THREATENS THE FUTURE MEMBERSHIP AND PARTICIPATION OF PAROCHIAL SCHOOLS IN THE WVSSAC ON THE GROUNDS OF PROHIBITED STATE SPONSORSHIP OF RELIGION.

The WVSSAC is comprised of principals or designees from public, private and parochial secondary schools. The Constitution of the WVSSAC, in the section titled "Membership," provides:

"The West Virginia Secondary School Activities Commission shall be composed of the principals or designee of those public **or private secondary schools** which have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic and band activities." WVSSAC Constitution §1-1-4.1 [Emphasis Added]

In addition, all members of the WVSSAC, including parochial representatives, are responsible for the administration of the WVSSAC, the regulation of interscholastic athletic and band activities of member schools and the funds of the Commission. Also, members of the WVSSAC elected to the

Board of Trustees, including parochial representatives, hold title to and manage the property of the commission. Further, members of the WVSSAC elected to the Board of Directors or as Executive Director, including parochial representatives, have the authority and duty to interpret and enforce the rules of the commission.

The Constitution of the WVSSAC in that section entitled "Administration" provides:

"5.1 The Administration of the West Virginia Secondary School Activities Commission shall be vested in the secondary school principals heretofore defined as members and who shall constitute a Board of Control. Said Board of Control shall determine the regulation of interscholastic athletic and band activities among the school's represented by the members of said commission and shall have charge of all funds of said commission, and in order to expedite the regulations of said activities shall delegate and assign to the Board of Directors hereinafter constituted, and the Executive Director, hereinafter constituted and through the Board of Directors, authority to interpret and enforce these regulations. Said Board of Control shall delegate and assign to the Board of Trustees, hereinafter constituted, the power and authority to hold title to and manage the property owned by said commission. These regulations of said commission shall be the articles, rules, explanations and interpretations which have been voted upon and approved by a majority vote of the members of the Board of Control present and voting at the annual meeting of said commission. Fifty (50) members shall constitute a quorum for the transaction of all business at said annual meeting and

approved by a majority vote of the members of the Board of Control present and voting at the annual meeting of said commission." WVSSAC Constitution §1-1-5.1

"5.2 At the annual or called meetings of the Board of Control of the West Virginia Secondary School Activities Commission each member shall have one vote on each question or proposition under consideration. A member may appoint, by a written statement to the President of said commission, the assistant principal or other member of the faculty to represent the school at meetings of the Board of Control but no such appointment shall absolve the member of his responsibility as defined in these regulations." WVSSAC Constitution §1-1-5.2

"5.3 The Board of Control of the West Virginia Secondary School Activities Commission shall, at its annual meeting, elect officers of the commission and define their duties as provided in § 127-1-6 of these regulations. The officers so elected shall be members of the Board of Directors of the West Virginia Secondary School Activities Commission with the powers and duties assigned to it by § 127-1-8 of the regulations of said commission. Said Board of Directors shall be the executive body of the commission. Further, said Board of Directors shall enforce the provisions of these regulations through the application of penalties provided under §127-6-2 of these regulations. Adjudication of disagreements and disputes among members of the commission shall be one of the chief duties of the Board of Directors. Such adjudication may, however, be appealed to the Review Board." WVSSAC Constitution §1-1-5.3

The finding by the Circuit Court of Cabell County that the WVSSAC is a state agency established pursuant to W.Va. Code

S18-2-25 potentially threatens the future membership and participation of parochial schools in the WVSSAC on the grounds of prohibited state sponsorship of religion.

The First Amendment to the United States Constitution states, "Congress shall make no law respecting an establishment of religion."<sup>4</sup>

In Lemon v. Kurtzman, 403 U.S. 602 (1970), the United States Supreme Court developed a three-part test to determine whether governmental action violates the Establishment Clause of the First Amendment to the United States Constitution. To comply with the Establishment Clause (1) a statute must have a secular purpose (2) its principal or primary effect must be one that neither advances nor inhibits religion and (3) the statute must not foster "an excessive government entanglement with religion." Id. at 612,613.

At issue in Lemon, was the constitutionality of Rhode Island and Pennsylvania programs providing state aid to private and parochial schools. The Rhode Island program consisted of salary supplements paid to teachers of secular subjects in private and parochial schools. Id. at 607-609. The

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<sup>4</sup> The First Amendment prohibition against governmental establishment of Religion is applicable to the States by incorporation through the Fourteenth Amendment. See Everson v. Board of Education of Ewing Township, 330 U.S. 1, 15 (1947)

Pennsylvania program involved direct reimbursements to private and parochial schools for teacher salaries, textbooks and instructional materials used in the teaching of specific secular subjects. Id. at 609-611. The court observed that continuation of both programs would require ongoing surveillance and auditing by the states to ensure that program monies were used for secular as apposed to religious purposes. Id. at 615-622. The court struck down both statutes as an impermissible entanglement of church and state. Id. at 622, 635

The United States Supreme court had another opportunity to examine legislation which involved government entanglement with religious organizations in Larkin v. Grendel's Den, Inc., 459 U.S. 116 (1982). In Larkin, the Court struck down a Massachusetts statute prohibiting issuance of a liquor license to any premises located within 500 feet of a church or school if the church or school makes a written objection to the issuance of the license. The court held that the statute "enmeshes churches in the exercise of substantial governmental powers contrary to our consistent interpretation of the Establishment Clause; 'the objective is to prevent, as far as possible, the intrusion of either [Church or State] into the precincts of the other.'" Id. at 512. The court then went on to state, "Under our system the choice has been made that the government is to be entirely excluded from the area of



religious instruction and churches excluded from the affairs of government." Id.

Applying the facts of the present case, it is clear that a characterization of the WVSSAC as "an agency or instrumentality of West Virginia state government," presents the potential danger of the entanglement of religious organizations in the affairs of government. If the WVSSAC is a state agency then the following deductions can be argued:

(1) Principals of parochial secondary schools (representatives of religiously-affiliated organizations) may appoint themselves to and serve as members of a West Virginia state agency; [WVSSAC Constitution §1-1-4.1]

(2) Principals of parochial secondary schools (representatives of religiously-affiliated organizations) will vote on the passage of state regulations; [WVSSAC Constitution §1-1-5.1 (4<sup>th</sup> and 5<sup>th</sup> sentence)], [WVSSAC Constitution §1-1-5.2 (1<sup>st</sup> sentence)].

(2) Principals of parochial secondary schools (representatives of religiously-affiliated organizations) have the power and duty to regulate the interscholastic athletic and band activities of public secondary schools (state entities); [WVSSAC Constitution §1-1-5.1 (1<sup>st</sup> and 2<sup>nd</sup> sentence)].

(3) Principals of parochial secondary schools (representatives of religiously-affiliated organizations) have control and oversight of the funds of public secondary schools (state entities); [WVSSAC Constitution §1-1-5.1 (2<sup>nd</sup> sentence)]

(4) The principal of a parochial secondary school (a representative of a religiously-affiliated organization) elected to the WVSSAC Board of Trustees will hold title to and manage property owned by public secondary schools (state entities); [WVSSAC Constitution §1-1-5.1 (3<sup>rd</sup> sentence)] and

(5) The principal of a parochial secondary school (a representative of a religiously-affiliated organization) elected as a member of the WVSSAC Board of Directors or as the WVSSAC executive director will have the authority to interpret and enforce West Virginia state regulations. [WVSSAC Constitution §1-1-5.1 (2<sup>nd</sup> sentence)]. Further, he or she will have the duty to adjudicate disagreements and disputes among public schools (state entities). [WVSSAC Constitution §1-1-5.3 (5th sentence)].

Further, in addition to these examples, the last sentence of W.Va. Code §18-2-25 provides as follows:

"Any such private or parochial secondary school shall receive any monetary or other

benefits in the same manner and in the same proportion as any public secondary school."

In the course of WVSSAC interscholastic state tournament competition, all schools, including parochial schools, qualifying for state playoffs are provided monetary benefits to help defray traveling costs. If the WVSSAC is a state agency, then state funds will be used to support the interscholastic extracurricular activities of religiously-affiliated organizations.

As the list of examples illustrates, the characterization of the WVSSAC as a state agency creates the danger of excessive government entanglement with religion and/or conduct which arguably amounts to a state endorsement of religion which would threaten the ability of parochial schools to participate and belong as members to the WVSSAC.

B.

THE CIRCUIT COURT'S FINDING THAT THE WVSSAC IS A STATE AGENCY ESTABLISHED BY W.VA. CODE §18-2-25 AMOUNTS TO AN UNCONSTITUTIONAL TAKING OF PRIVATE AND PAROCHIAL SCHOOL PROPERTY.

The characterization of the WVSSAC as an "agency or instrumentality of West Virginia state government" amounts to the potential conversion of private and parochial school property. The WVSSAC is permitted to and does own property in the name of its Board of Trustees. [WVSSAC Constitution §1-1-5.1 (3<sup>rd</sup> sentence)]. The assets of the WVSSAC belong to its member schools, which include private and parochial schools, and which are accumulated through dues payments from member schools. Because parochial and private schools contribute to and own a portion of the WVSSAC's assets, the recharacterization of the WVSSAC as a state agency may arguably amount to an unlawful conversion of private and parochial school property.

C.

THE WVSSAC IS A PRIVATE VOLUNTARY ASSOCIATION OF  
PRINCIPALS OF WEST VIRGINIA PUBLIC, PRIVATE AND  
PAROCHIAL SCHOOLS

In Paragraphs 30 and 34 of its "Amended Order", the Circuit Court of Cabell County held that the WVSSAC is an "administrative agency of the state" and a "statutorily-created agency or instrumentality of West Virginia state government." The WVSSAC is not a state agency and is instead a private voluntary association of principals of West Virginia private, public and parochial secondary schools. See Sanders v. Louisiana High School Athletic Association, 242 So.2d 19, 28-29 (La.App.3<sup>rd</sup> Cir. 1970) (Our state courts have regarded Louisiana High School Athletic Association as a private association, and the state courts of all other states, as far as we have been able to determine, have considered similar organizations in those states to be private associations.). The WVSSAC was organized on June 17, 1916 and from the date of its inception until the present, the WVSSAC has controlled, supervised and regulated the interscholastic athletic events and other extracurricular activities of its member schools.

The WVSSAC was originally organized as a private voluntary association of public school principals; however, over the course of time, the composition of the organization

transformed. Contrary to the Cabell County Circuit Court's ruling, the WVSSAC resembles a private, voluntary organization now more than ever. In 1967, membership in the WVSSAC was opened to principals of private and religiously-affiliated secondary schools. Today, approximately 12 of the 137 WVSSAC members (8.8%) are private or parochial schools. In addition, there are West Virginia Secondary schools that do not belong to the WVSSAC.<sup>5</sup>

W.Va. Code §18-2-25, which was enacted in 1967, statutorily recognized the existence of the WVSSAC and gave county boards of education, along with private and parochial schools, statutory authorization to delegate control, supervision and regulation of interscholastic athletic events and band activities to the WVSSAC. Although W.Va. Code §18-2-25 contains language that "the 'West Virginia secondary school activities commission,' which is hereby established" the WVSSAC had already been in existence for more than fifty years prior to the enactment of that statute. The West Virginia legislature could not have intended to create a state agency and at the same time provide for the appointment of representatives of religiously-affiliated organizations to that agency, whose duties would entail drafting and passing state

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<sup>5</sup> The Linsly School located in Wheeling, Ohio County, West Virginia is a secondary school that does not belong to the WVSSAC.

regulations and enforcing such regulations against other state entities.

The West Virginia Supreme Court has implicitly addressed the state versus private nature of the WVSSAC on at least two occasions. In State ex. rel. Manchin v. West Virginia Secondary School Activities Commission, 178 W.Va. 699, 364 S.E.2d 25 (1987), the court held that funds received by the West Virginia Secondary School Activities Commission, which commission operates pursuant to authority granted it by county boards of education under W.Va. Code §18-2-25 (1967), are "quasi-public funds" as defined in W.Va. Code §18-5-13 (1987) and are to be accounted for in a manner similar to that provided for funds of county boards of education, but such funds are not to be accounted for under W.Va. Code §12-2-2 (1983) as "monies due the state." Id. at Syllabus Pt. 1. In rendering the decision, the court had the opportunity to declare that the WVSSAC was a state agency and therefore its funds were "monies due the state." However the court declined to do so and instead gave the commission greater autonomy over its funds much in line with the organizations private roots.

Also, in State ex rel. West Virginia Secondary School Activities Commission v. Oakley, 152 W. Va. 533, 164 S.E.2d 775 (1968), the court held that a circuit court lacked jurisdiction to consider an appeal of a decision of the WVSSAC's Review

Board. The court also held that the judicial review provisions of the State Administrative Procedures Act were inapplicable to the WVSSAC Review Board. Implicit in that ruling was the determination that the WVSSAC was not a state agency.

In addition to the cases cited above, the West Virginia Supreme Court, in Blower v. West Virginia Educational Broadcasting Authority, 182 W. Va. 528, 389 S.E.2d 739 (1990), has set forth the following criteria for determining whether an organization is a state agency:

"Thus, from our prior cases determining whether a particular organization is a state agency, we have examined its legislative framework. In particular, we look to see if its powers are substantially created by the legislature, and whether its governing boards' composition is prescribed by the legislature. Other significant factors are whether it can operate on a statewide basis, whether it is financially dependent on public funds, and whether it is required to deposit its funds in the state treasury." *Id.*, at 530, 389 S.E.2d at 741.

Upon application of the criteria set forth in Blower, it is clear that the WVSSAC is a private, voluntary organization and is not an agency of the state.

The first criteria utilized under Blower to determine whether an organization is a state agency, is whether the



powers of the organization at question were substantially created by the legislature. The WVSSAC was not created by an act of the West Virginia legislature. The Commission was organized on June 17, 1916, and from the moment of its inception to present has controlled, regulated and supervised the interscholastic athletics and other extracurricular activities of its members. Although W.Va. Code §18-2-25 addresses WVSSAC subject matter, that statute enumerates no powers in addition to those powers which had already been exercised by the WVSSAC for over 50+ years. Further, the grant of any authority to the WVSSAC by the West Virginia Legislature is indirect. The authority of the WVSSAC to regulate the interscholastic activities of public schools is derived from lawful delegation from public schools to the WVSSAC of authority conferred upon public schools by the legislature.

The second Blower criteria is whether the composition of an organization's governing board is prescribed by the legislature. Although W.Va. Code §18-2-25 authorizes local county school boards to delegate their powers to control, supervise and regulate interscholastic athletic and other curricular activities to the WVSSAC, it does not force them to do so. Membership of all West Virginia secondary schools in the WVSSAC is completely voluntary. The actual composition of the governing body of the WVSSAC is prescribed by the WVSSAC's members. [WVSSAC Constitution §§1-1-4.1, 1-1-5.1].

The third factor used in the Blower framework is whether the organization in question operates on a statewide basis. Clearly the WVSSAC has the ability and does operate on a statewide basis. This factor alone cannot render an entity a state agency as there are many private organizations that also operate on a statewide basis. Further, as mentioned earlier the WVSSAC does not regulate all secondary educational institutions within the state. The WVSSAC attains its statewide presence only through the voluntary decision of its members to join.

The next criteria under the Blower framework is whether the organization is financially dependent upon public funds. The WVSSAC does not and has never directly received public funds. The funds used by the WVSSAC to finance its ongoing operations are derived from membership dues from both public and private secondary schools. The fact that the WVSSAC is in part funded through private and religious monies alone should weigh heavily in favor of a determination that the WVSSAC is a private entity.

The last criteria articulated in Blower for the determination of whether an organization is a state agency, is whether the entity is required to deposit its funds in the state treasury. This issue was directly addressed by the West

Virginia Supreme court in the case of State ex. rel. Manchin v. West Virginia Secondary School Activities Commission, 178 W.Va. 699, 364 S.E.2d 25 (1987), where it was determined that the funds of the WVSSAC are "quasi-public funds" and are not "funds due the state."

By examining the history of the WVSSAC in conjunction with those factors articulated in the Blower decision, it is clear that the WVSSAC is not a state agency but is instead a private voluntary organization.

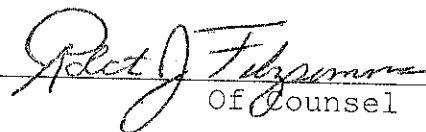
V.

**Relief Requested**

For the foregoing reasons, *amici curiae*, Wheeling Central Catholic High School and Weirton Madonna Catholic High School, respectfully request the Court to accept the appeal of petitioner, West Virginia Secondary School Activities Commission, and find that the Circuit Court of Cabell County erred in ruling that the WVSSAC is a "statutorily-created agency or instrumentality of West Virginia state government."

Respectfully submitted,

**WHEELING CENTRAL CATHOLIC  
HIGH SCHOOL**

By:   
Of Counsel

Robert P. Fitzsimmons (1212)  
Robert J. Fitzsimmons (9656)  
Fitzsimmons Law Offices  
1609 Warwood Ave  
Wheeling WV 26003  
(304) 277-1700

Respectfully submitted,

**WEIRTON MADONNA CATHOLIC  
HIGH SCHOOL**

By: Mike Nogay <sup>by RJF</sup>  
of Counsel

Michael E. Nogay (2744)  
Sellitti Nogay & McCune PLLC  
3125 Pennsylvania Ave Ste 7  
PO Box 3095  
Weirton, WV 26062  
(304) 723-1400

## CERTIFICATE OF SERVICE

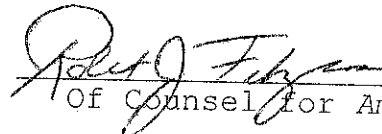
Service of the foregoing RESPONSE OF AMICI CURIAE OF WHEELING CENTRAL CATHOLIC HIGH SCHOOL AND WEIRTON MADONNA CATHOLIC HIGH SCHOOL TO PETITION FOR APPEAL OF WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION was made upon the parties to this action by mailing a true copy thereof by United States mail, postage prepaid, to their respective attorneys on the 11th day of October, 2007, as follows:

**O. J. Mayo**

Michael A. Woelfel Esq.  
Matthew J. Woelfel Esq.  
801 8<sup>th</sup> St  
Huntington WV 25701

**West Virginia Secondary  
School Activities Commission**

c/o William R. Wooton Esq.  
The Wooton Law Firm  
P O Box 2600  
Beckley, WV 25802-2600

  
Of Counsel for Amici Curiae

SPECIAL MEETING  
BOARD OF APPEALS  
Parkersburg, West Virginia  
February 14, 1970

The Board of Appeals of the West Virginia Secondary School Activities Commission met in special session at its offices in Parkersburg, West Virginia, on February 14, 1970, at the request of Sister Anne Regina, Principal of Wheeling Central Catholic High School, to consider its application for membership to the Commission.

The following Board members were in attendance at the meeting: Mr. Charles Deah, Jr., President; Mr. E. W. Malcolm, Vice President; Mr. E. M. Bartrug, Member; Mr. Robert Kidd, Member, and Mr. Iliff West, Member. Mr. O. C. Fowler was unable to attend due to a meeting in Washington, D. C. Others in attendance were W. G. Eismon, Executive Secretary of the Secondary School Activities Commission, and Sister Anne Regina, Principal of Wheeling Central Catholic High School.

- 1) The Board of Appeals approved Wheeling Central Catholic's admission to the West Virginia Secondary School Activities Commission effective July 1, 1970, providing the zone lines for the school were approved by the Diocesan School Board to read as follows:

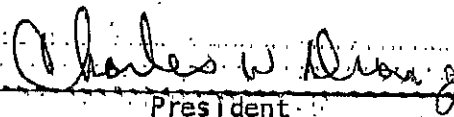
"Wheeling Central Catholic High School's attendance zone shall be confined to those pupils whose parents reside in Ohio County and who are members of the Roman Catholic Church and who belong to one of the following parishes:

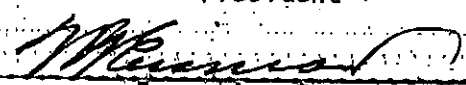
Corpus Christi	Our Lady of Peace (In Marshall County)
Sacred Heart	Cathedral
Blessed Trinity	St. Joan of Arc
St. Ladislaus	St. Michael's
St. Mary's	St. Vincent's
St. Alphonsus	

2. A request from Mr. C. P. Wells, Principal of Nicholas County High School, to play a football game on August 27, 1971 was denied by the Board as the rules of the Secondary School Activities Commission do not permit a game to be played earlier than September 1 in 1971.
3. Steve Martin, a pupil presently enrolled in St. Albans High School, was ruled ineligible under the transfer rule of the Secondary School Activities Commission to participate in interscholastic athletics at that school for one calendar year from date of enrollment there in January, 1970.
4. The Board studied at length the cases of Rusty Westcott and Barry Sullivan of Huntington East High School, whose parents reside in the Barboursville High School attendance zone but who are enrolled in and attending Huntington East High School. These two boys were permitted to participate in interscholastic athletics prior to establishing eligibility under the rules of the Secondary School Activities Commission, were later declared ineligible by Mr. Herbert Nutter, Principal of Huntington East. The Board was of the opinion Mr. Nutter made the correct decision in both cases.

5. Gary Verse who was permitted to participate in interscholastic athletics at Sherman High School while ineligible was ruled ineligible for one calendar year from last date of participation, December 11, 1969. Further, the school was requested to forfeit to its opponents all games in which Gary played that were won by Sherman High School.
6. Robert Tolliver, a pupil presently enrolled at Glen Rogers High School, was granted immediate eligibility there under Rule 7-5-0 of the Secondary School Activities Commission Handbook.
7. Thomas Green, who attended Bruce High School of Westernport, Maryland, the first semester of the current school year but whose family has always resided in Piedmont, West Virginia, was ruled ineligible at Piedmont High School until the start of the second semester of the 1970-71 school term.
8. The Board approved the following items as they relate to the high school track program in West Virginia.
  1. The wearing of stockings, sun glasses, and caps by participants in track meets in West Virginia is forbidden.
  2. The throwing of a baton at the conclusion of a relay meet by a member of a school's relay team will automatically disqualify the team from receiving any honors to which it might have been entitled.
9. The Executive Secretary gave the Board brief reports on certain trouble that occurred at the following basketball games.
  - February 5 - Duval - Wayne
  - February 6 - George Washington - Sissonville
  - February 3 - Harrisville - Sistersville
  - February 3 - Montcalm - Talcott
  - February 10 - Cameron - Valley (Pine Grove) Reserves

The meeting adjourned at 2:00 p.m.

  
President

  
Executive Secretary